

**ENTERED**

September 19, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	CRIMINAL NO. H-17-466
	§	
FERNANDO AVILES	§	

**REPORT AND RECOMMENDATION**

Before the court, by referral pursuant to 28 U.S.C. §636(b), is the matter of the re-arraignment of Fernando Aviles, the defendant in this action. On September 18, 2017, Defendant Fernando Aviles appeared with counsel before the undersigned magistrate judge for the purpose of entering a guilty plea to the Indictment charging him with illegal reentry into the United States after deportation and after conviction of a felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(1).

Defendant Fernando Aviles consented in writing to plead guilty before a United States Magistrate Judge. After conducting said proceeding in the form and manner prescribed by Rule 11 of the Federal Rules of Criminal Procedure, this court makes the following findings of fact:

1. Defendant Fernando Aviles, after consultation with counsel of record and with the approval of the government, has knowingly and voluntarily consented to be advised of his rights and to enter a plea of guilty before a U.S. Magistrate Judge subject to final approval and imposition of sentence by United States District Judge Gray Miller.

2. Defendant Fernando Aviles is fully competent and capable of entering an informed plea.
3. Defendant Fernando Aviles is aware of the nature of the charges, the maximum punishment range and other penalties that may be imposed at sentencing.
4. Defendant Fernando Aviles understands his constitutional and statutory rights and wishes to waive those rights.
5. Defendant Fernando Aviles understands that the sentencing judge is not bound by any recommendation on sentencing made by either counsel for the government or counsel for the defendant, and that if a recommendation on sentencing is not followed by the sentencing judge, he may not withdraw his plea of guilty.
6. Defendant Fernando Aviles's plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense charged in Count 1 of the Indictment.

Based upon the foregoing, it is **RECOMMENDED** that the guilty plea of Defendant Fernando Aviles to Count 1 of the Indictment be accepted by the court and that Fernando Aviles be adjudged guilty of the offense alleged in Count 1 of the Indictment, to wit: illegal re-entry into the United States after deportation and after conviction of a felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(1).

The Clerk shall send copies of this Report and Recommendation to the respective parties who have fourteen (14) days from the receipt thereof to file written objections thereto pursuant to General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas, 77208. Copies of such objections shall be mailed to opposing parties and to the chambers of the undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

**SIGNED** at Houston, Texas, this 19<sup>th</sup> day of September, 2017.



U.S. MAGISTRATE JUDGE